

**FINAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
OF THE
CALIFORNIA STATE LANDS COMMISSION**

**REGARDING THE 2001 CALIFORNIA BUILDING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2**

MARINE OIL TERMINALS, CHAPTER 31-F

UPDATES TO THE INITIAL STATEMENT OF REASONS:

There were no changes made to the regulations as a result of public comments received. Therefore, there is no update to the Initial Statement of Reasons.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The California State Lands Commission has determined that the proposed regulatory action WOULD NOT impose a mandate on local agencies or school districts.

The California State Lands Commission finds that the mandate IS NOT reimbursable.

None of the work required by these proposed regulations would incur costs to the Commission. Commission staff will oversee inspections and monitor remedial work conducted at marine terminals undergoing the Marine Oil Terminal Engineering and Maintenance Standards audits as part of their routine work that is covered by the commission's annual budget.

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S).

There were no objections to the proposed regulations. There was one recommendation made by a commenter at the public hearing. That recommendation has been addressed in the response to Comment No. 8, shown below:

SUMMARY OF AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF MAY 28, 2004 THROUGH July 13, 2004

Oral comments of Mr. Dennis Bolt of the Western States Petroleum Association (WSPA).

COMMENT NO. 1: Mr. Bolt explains the representation of WSPA and its interest in the business of marine oil terminals. Mr. Bolt states that WSPA represents many of the oil terminals in California but not all of them. Mr. Bolt adds that it's important to note that many of the smaller operators and some of those perhaps at the most economically at risk or infeasible under MOTEMS are not represented by WSPA. Mr. Bolt wanted that made clear in the record.

Response: This comment does not pertain to any matter relevant to the proposed regulations. Therefore, no response is provided.

COMMENT NO. 2: Mr. Bolt states that it is important to recognize what is right about MOTEMS and what a world-class job the State Lands Commission (SLC) has used in the development of

these regulations. Mr. Bolt further states that it is the right way to develop a regulation. He describes it as a very inclusive process which included the involvement of many members of WSPA's marine terminal operators and top engineers certainly in the west, and perhaps in the world, to consult, advise, and collaborate on the provisions in the regulations.

Response: This comment does not pertain to any matter relevant to the proposed regulations. Therefore, no response is provided. The SLC appreciates the comment.

COMMENT NO. 3: Mr. Bolt states, "No one is challenging that MOTEMS is protective of the worst scenarios of natural disasters. In other words, it is the best technology that's ever been conceived for the protection of marine oil terminals. I think State Lands went to the lengths that they felt they could in allowing flexibility in the regulation for alternative approaches and solutions to findings following the audit. It's stiffer than we would like, but we sure understand the Division's position on it. And we appreciate defining the necessity to have a long enough timeline so that these extensive, if and where there are extensive rehabilitation and construction projects and capital investments, that there's an extensive timeline that's subject to the Division's approval and the risk evaluation can accommodate those various needs. WSPA and its members are not opposed to MOTEMS. We're not here today to oppose MOTEMS. Neither are we embracing it, because there are some broader public policy issues at stake that need to be vetted. But if the public policy makers embodied in the Commission as a whole adopt these regulations, the Building Standards Commission makes them a building code as they're properly constructed, our members will appropriately and aggressively implement them as required."

Response: This comment does not pertain to any matter relevant to the proposed regulations. Therefore, no response is provided. The SLC appreciates the commendations in the comment.

COMMENT NO. 4: Mr. Bolt states, "The SLC has a slice of the state and the nation's energy policy pie and MOTEMS looks very intensely at that slice of the pie and very appropriately, because that's the statutory mandate this agency has, is look at your slice and take care of it. When this slice of the pie, however, is looked in the whole context of the whole energy pie, some broader, more important public policy questions arise. And it's to some of those that I would like to speak today. MOTEMS was envisioned in a different time, a time where it was perceived that we had plentiful energy supplies, sufficient refinery capacity, and adequate wharfage, if you will, to meet the needs in bringing in and exporting and transporting petroleum and petroleum products. MOTEMS, in its Statement of Reasons, the Division envisions marine terminals will be taken out of service, be found not fit for service, having to downsize vessels at the wharves. In the Statement of Reasons, there's a picture painted that what is out there might not cease not to exist. It is unknown and unknowable at this point. No adequate survey has been done where are which terminals might be at risk of environmental or economic feasibility. In other words, cease to be there as part of the petroleum infrastructure in the state. And no adequate survey or assessment of that potential risk has been performed by anyone at any level."

Response: This comment does not pertain to any matter relevant to the proposed regulations. Therefore, no response is provided. The statement regarding the Initial Statement of Reasons (ISOR) and that SLC envisions that some terminals will be taken out of service is incorrect. The statement "that SLC paints a picture that some terminals might not cease not to exist," is also incorrect. The SLC does not address these matters in the ISOR.

COMMENT NO. 5: Mr. Bolt states, "The California Energy Commission has identified marine oil terminals as an economic bottleneck to importing finished products into the state of California. What they have been speaking to is the future projected inadequate refining capacity in the state of California and the need to import more fuels, and they have to come by marine vessel, and

there is inadequate facilities to import and tank those products. That restriction or bottleneck has been identified by policy makers at the state level in another slice of the California energy pie, if you will."

Response: This comment does not pertain to any matter relevant to the proposed regulations. Therefore, no response is provided.

COMMENT NO. 6: Mr. Bolt states, "Neither SLC nor anyone has determined if and which marine oil terminals will survive the audit requirements contained. There's no provision for waiver, extension. I mean it's a box and you have to fit -- everybody has to fit in the box or get out of business, that's the way we read the regulation."

Response: This comment does not pertain to any matter relevant to the proposed regulations. It is a general comment regarding the application of the regulations. The comment regarding provisions for "waivers" is not entirely correct. Section 3101F.2 allows for alternatives. Also, per Section 3102F.3.7 follow up and remedial actions will be proposed by the terminal operator and the audit team and be subject to SLC approval. This provision gives the terminal operator a reasonable margin to complete follow up and remedial work.

COMMENT NO. 7: Mr. Bolt assumes that some terminals will go out of business and asks, "What are some of the untoward impacts of this that have not been analyzed. What if a marine terminal in the north coast or central coast area which has narrow two lane highways getting into it, sensitive environmental areas in the redwoods and northern California, the sensitive marine mammal environments down there, no one has assessed the impact of closing marine terminals and now trucking these petroleum products up and down Highway 1 or US 101 through the Humboldt base. Nobody has looked at that. Is it a potential problem, and if it is a potential problem, can it be mitigated? And if it can't be mitigated, what are the risks? So the environmental and public policy impacts on the availability of fuels and markets in the state, and potential environmental impacts not related directly to marine oil terminals, but as a risk of the risk to marine oil terminals haven't been assessed at any strategic level. Just performing a complete EIR, it would be easy for us to stand up here and say go do an Environmental Impact Report. We don't put that forward as the solution today. We think that many of these questions would go on unanswered."

Response: The comment speculates that some terminals in Northern California will go out of business because of MOTEMS and this would impose greater environmental impacts in those areas due to a resultant increase in road vehicular traffic transporting oil and fuel to those areas. This comment does not pertain to any matter relevant to the proposed regulations. No response is required.

COMMENT NO.8: Mr. Bolt states, "We also say today that we don't think that the Statement of Reasons adequately represents the current state of marine oil terminals in the state, nor is a balanced view of the current risk. And we think some particular points ought to go back and be made in there. I would be glad to work with the Division on comments, but just some observations about that. Many of the marine oil terminals have been upgraded, have been modernized, and capable of withstanding even the most stringent risk identified in MOTEMS and the Statement of Reasons really leaves the opposite impression. And frankly, there is a whole range of conditions of marine oil terminals that we recognize. And the fact that industry has invested tens of millions of dollars in many of the marine oil terminals for the benefit of the state and for the benefit of their own companies is something that should appropriately be identified in the Statement of Reasons. What might be considered is some kind of preliminary survey of the marine terminals in the state to make some kind of evaluation or representation, an appropriate

one but not necessarily an objective one of what are the risks to the state of California and its various locales. It's really the big unanswered question that is out there about these regulations. Every one looks at their own wharf from their own perspective and there is really no one taking the global view, and nobody knows more about this than the expertise that resides in the State Lands Commission. So there might be a place to call for pause here and say let's take a report card on what is really out here, who's upgraded, who's more modern, who goes back to the 19th century practically. Maybe not identified by name, I don't know. You know, if we go down that road, I would like to have a stakeholders' group to kind of look at that."

Response: This comment does not directly address the provisions of the regulations. It implies that the ISOR does not represent the current state of marine oil terminals in the state, nor is it a balanced view of the current risk. It also implies that the ISOR does not identify or address terminals which have been upgraded or modernized. The SLC believes that it has adequately addressed the current state of terminals and the risks associated with them in the ISOR. Government Code §11346.2, requires that the ISOR address the specific purpose of the regulation, the necessity for the regulation, the technical, theoretical, and/or empirical study, reports or documents used to assist in the rulemaking and to show reasonable alternatives to the regulations. The SLC believes that it has adequately addressed those matters in the ISOR. The ISOR has also clearly stated that no alternatives have been presented or considered. Mr. Bolt admits in Comment No. 2, that WSPA members were actively involved in the preparation and review of the MOTEMS. WSPA members did not propose any alternatives during such discussions. The statement that industry has invested tens of millions of dollars in many of the marine oil terminals for the benefit of the state and for the benefit of their own companies is something that should appropriately be identified in the Statement of Reasons is irrelevant and extraneous to the requirements of Government Code § 11346.2. The SLC has carried out annual inspections of all terminals since 1992 and has a great deal of knowledge and information regarding each terminal's condition and risk. However, this information is considered restricted and cannot be divulged in a public document like the ISOR. Mr. Bolt advocates taking a pause at this stage and take a 'report card' on what is really out there. This statement does not acknowledge the inspections conducted by SLC staff since 1992. As stated earlier, the SLC already has the information referred to by Mr. Bolt. The SLC believes that it is unnecessary to pause at this stage.

COMMENT NO. 9: Mr. Bolt states, "We think that the Statement of Reasons should cite the current protective regulations, environmental protective regulations, of OSPR in the Statement of Reasons. The Statement of Reasons is kind of silent, it is literally silent on what is currently out there and it leaves the reader the impression that society lies at risk of these marine oil terminals. In fact, the state's definition of a major oil spill is already mitigated in the existing legislation. In looking at the functional scenario and one conversation I had, the risk that MOTEMS mitigates against is the dock collapsing and a vessel being set at risk in the waters. So if we really narrow it down to what are we protecting or what are we doing. There's some details about piping and some details about fire, but when you really look at the structural capacity, what are we mitigating in that by some is perceived to be the actual risk. Because the risk of oil spill from an earthquake or tsunami or whatever, it has already been mitigated in the OSPR regulations in our view."

Response: The SLC believes that the commenter misunderstands the purpose of the Office of Spill Prevention and Response's (OSPR) regulations. OSPR's regulations only address response strategies and financial responsibilities after an oil spill has occurred. The proposed MOTEMS regulations are designed primarily to prevent oil spills. In the event of an oil spill, public health and safety and the environment would have already been seriously impacted. At that stage, OSPR's regulations would come into effect for the purpose of cleaning up and providing financial responsibility. OSPR's regulations only mitigate impacts after damage has occurred. If the

provisions of the MOTEMS were implemented, it would considerably reduce the risk of oil spills especially during abnormal natural events such as earthquakes. The entire focus of OSPR's regulations and the MOTEMS are different. Citing OSPR's regulations in the ISOR would therefore be irrelevant and extraneous to the purpose of the MOTEMS.

It is difficult to understand Mr. Bolts comment "... Because the risk of oil spill from an earthquake or tsunami or whatever, it has already been mitigated in the OSPR regulations in our view" without him being specific. OSPR's regulations do not mitigate "risk"; they mitigate "damage" that has already occurred.

Lastly, this comment does not directly address any of the provisions of the regulations.

COMMENT NO. 10: Mr. Bolt states, "...if that is in fact what we're mitigating, there's really no difference, there's no substantive difference in the risk from marine oil terminals and all marine terminals, if we're talking about vessels set adrift in marine waters..."

Response: Firstly, this comment does not directly address any of the provisions of the regulations. Next, the SLC does not agree with Mr. Bolt's opinion expressed in Comment No. 10. The MOTEMS regulations are designed to protect against the collapse of docks and wharves where tank vessels and barges are docked. This, in turn, ensures that tank vessels and barges (liquid bulk carriers) will be safely berthed at the dock. In the event that a tank vessel or barge breaks away from a dock, there is an immediate risk of oil spilling not only from the vessel, but more likely from the pipelines, manifolds and the storage tanks adjacent to the dock that the vessel is connected to at the dock. This is not the case with other types of vessels. If a container vessel or solid bulk carrier breaks away from a dock, there is little or no risk of release of their cargo into marine waters or the environment. The risk of pollution and damage to the environment at an oil terminal is much greater than the risk at other terminals. As stated in the ISOR, an oil spill at a dock within a port area has the capacity to declare closure of the port and stoppage of all marine traffic until all the oil has been cleaned up. The closure of a port can have an enormous financial and economic impact on the state and the nation. With container vessels and solid bulk carriers breaking away from a dock, there is hardly a likelihood of the event leading to a closure of the port.

COMMENT NO. 11: Mr. Bolt states, "In WSPA's view, and we've said this in writing to the Division before, MOTEMS is more prescriptive than what it needs to be to protect the public health, safety, and the environment, and it overreaches what is required for that protection in the statute. Having already said it's a world-class effort and a new level of scientific understanding and protection, the ultimate, if you will. When you actually break down following the surveys what is needed to get that same level of protection, given a level of risk at a particular site, you might well come up with a much more reasonable solution than that which is required by MOTEMS. It's a lot more work. I appreciate that it's not a universal standard applied by all, because a universal standard applied by all doesn't have the same level of risk, the same level of age, the same level of condition."

"So beyond the current technologies we believe are protective, we believe that the catastrophic scenarios pictured by MOTEMS, when coupled with the current capital investments haven't been made and being made in the wharves that are already out there in the queue, we think these are measurable risks that is reasonable for the state to take while a more balanced approach is taken to the implementation of MOTEMS."

Response: There are several points included in this comment. Firstly, this comment does not directly address any of the provisions of the regulations. The comment is mainly an expression of WSPA's views regarding the MOTEMS. Without being specific, Mr. Bolt states that the regulations overreach what is required for that protection called for in the statute. The SLC does not agree with this statement. As to the regulations being more prescriptive than they need to be, Mr. Bolt does not explain or give examples to support his statement. Without specific examples, the SLC cannot respond to the statement.

The comment "When you actually break down following the surveys what is needed to get that same level of protection, given a level of risk at a particular site, you might well come up with a much more reasonable solution than that which is required by MOTEMS" is vague and non-specific. It does not demonstrate its intent. The SLC cannot respond to the comment.

Mr. Bolt's comment, "So beyond the current technologies we believe are protective, we believe that the catastrophic scenarios pictured by MOTEMS, when coupled with the current capital investments haven't been made and being made in the wharves that are already out there in the queue, we think these are measurable risks that is reasonable for the state to take while a more balanced approach is taken to the implementation of MOTEMS" is unclear. It appears that WSPA is measuring the industry's capital and ongoing investments in terms of risks. The ISOR clearly describes the age, condition and the lack of building and other standards used in the construction of existing wharves. The SLC, in carrying out its mandates, and with extensive knowledge of lessons learned from recent earthquakes, believes that the provisions of the MOTEMS are a balanced approach to ensuring public health and safety in California. Also, MOTEMS does consider different levels of risk posed by various marine terminals and tailors criteria to age (new or old) and risk profile of terminals. Section 3101F.5 provides for risk reduction strategies to lessen stringency of the requirements. Also, Tables 31F-4-1, 31F-5-1 and 31F-8-2, take into consideration reduction of risk from seismic, mooring and vessel loads and fire sources. Throughout the MOTEMS regulations, there are provisions that are more stringent for new terminals and less stringent for existing terminals.

Lastly, the SLC appreciates Mr. Bolt's comment that the MOTEMS is "a world-class effort and a new level of scientific understanding and protection, the ultimate, if you will."

COMMENT NO. 12: Mr. Bolt states, "We stated MOTEMS we think underestimates the potential societal costs and environmental risks that are created by the rules. It fails to evaluate the impacts if terminals close due to MOTEMS, economic and environmental as stated. It doesn't evaluate the potential environmental or economic risks, including probable requirement for permits and EIRs during the reconstruction."

Response: Firstly, this comment does not directly address any provision of the regulations. The comment appears to be an opinion expressed by Mr. Bolt regarding costs involved in implementing the requirements of MOTEMS. The ISOR and Form 399 outline approximate costs to the industry. Mr. Bolt's speculation, that some terminals may cease to do business, is unfounded. None of the businesses that are subject to the regulations are considered "small businesses" as defined in Government Code §11342.610. It is difficult to see how any terminal will go out of business. In SLC's view, some of the remedial work associated with the application of the MOTEMS may be subject to the issuance of permits by cities. For existing terminals, the SLC does not envisage that remedial work will be subject to an EIR. During the preparation of the MOTEMS, SLC staff has carefully evaluated societal costs and environmental risks resulting from compliance with the MOTEMS regulations in comparison with societal costs and environmental risks of non-compliance with the MOTEMS.

COMMENT NO. 13: Mr. Bolt states, "I can tell you we had a facility trying to put up a security fence in the Bay Area, they waited for two years for the permit. They couldn't build a fence on the shoreline until the Coast Guard said they were going to come in and find the whole region in violation or something. I mean I'm just saying it is complicated in California to do anything, and this regulation puts the hammer to the anvil of you can't build anything."

Response: Firstly, this comment does not directly address any provision of the regulations. The comment appears to be an opinion expressed by Mr. Bolt regarding the complications of doing business in California. As this comment has no reference to any provision of the proposed regulations, no response is provided.

COMMENT NO.14: Mr. Bolt states, "And what does that mean to real people? I think about oil companies. Trust me, we'll be okay. Think about the real people in this state, think about the businesses that want to locate or expand here, think about the people who want to raise their children here."

Response: This comment does not address any specific provision of the regulations. It is merely a statement of Mr. Bolt's opinions. No response is provided.

COMMENT NO. 15: Mr. Bolt states, " We believe firmly that every comma and every sentence of MOTEMS could be implemented and required where appropriate using, I don't want to say stage, but a process set up in phases. We think that a reasonable survey, not necessarily the whole MOTEMS audit, but one that would take you substantially in that direction, but one that can be done quicker, simpler, and get you to the place where, when coupled with grand fathering in the surveys that have already been done that the Division's been involved in, the wharves, all wharves in the state, could be surveyed within a reasonable period of time and the environmental, economic, and supply risk analyses performed for each terminal against the likely scenarios for that location. All this under the approval and supervision of the Division, protective against earthquakes, tsunamis, passing vessels, mooring analyses, weight, size of vessels, with appropriate engineering expertise that could recommend what level of retrofit would be available. So substantially we agree with the audit criteria to get a sense of really what is out there and what is the risk for the state in all of the areas that I've talked about. "

Response: This comment does not address any specific provision of the regulations. It is an expression of WSPA's views on the implementation of the MOTEMS suggesting "surveys" instead of "audits" that can be done in a quicker, simpler way to recommend what level of retrofit would be necessary.

COMMENT NO. 16: Mr. Bolt states, "We believe that the whole energy pie should be looked at, not just CEC's piece, not just State Lands' piece, not just OSPR's piece, not just OES's piece, not just the State Fire Marshal's piece. We frankly think that all of those agencies involved in that public policy pie, probably with the Governor's Office of Planning and Research or someone with 360 view of these issues, could take a look at all of the issues, including the reconstruction and rehabilitation barriers. And as an interagency group, chart the public policy path that considers the whole 360 degrees, considers all the people in California, and all of the impacts, and not just well, this company has done their capital investments, and this company is out of business at least in that area. They would be looking at real sites and real engineering information. Having done the survey, they would be able to study the environmental, economic impacts of implementing MOTEMS in light of actual knowledge of the conditions of individual wharves. They would be able to recommend the best approach to deal with marine terminal weaknesses based on likely scenarios for the actual location. And if additional statutory authority or clarification is

needed, you would have this multi-faceted agency and the Governor's office full force behind legislative initiatives to build consensus around good public policy."

Response: This comment does not address any specific provision of the regulations. It is an expression of WSPA's views on the implementation of the MOTEMS within a public policy that takes into account the 'whole energy pie' as opposed to implementing it as a slice of the pie. The comment also recommends government action with a 360° view of all energy issues as good public policy.

COMMENT NO. 17: Mr. Bolt states, " I just want to reiterate, underscore, we've got a great deal of respect for not only the Marine Division and how this process has been done, but how we've been treated in it. And none of these issues are issues in any way reflective on the Division or their mission or their statutory mandate, but rather, you know, this is probably a conversation we wouldn't have had a few years ago, but rather something that is real and is on the public policy radar screen today. And the Division's been working on this regulation for years and our society has evolved that far to make these issues critical for this conversation of a public policy standpoint. We'll be putting extensive written comments in the record before the Commission and we'll be there for that meeting and available to collaborate or work in between then."

Response: This comment does not address any specific provision of the regulations. Therefore no response is provided. The SLC appreciates WSPA's expression of respect for the manner in which the SLC conducts its business.

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

The California State Lands Commission has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation

These proposed standards have been developed in close consultation with the marine oil industry and the regulated community. Commission staff has had extensive interaction with industry, and have utilized many of their suggestions in the drafting of these standards. The acceptance of suggestions from the regulated community has, in effect, ensured that all alternatives have already been incorporated in the provisions of these standards. All affected parties have participated or at least been completely informed about these standards and their development. Two large workshops (80 to 100 attendees) were held during the development of these standards. At the conclusion of the public comment period, there were no technical issues, comments or statements with regard to alternative measures.

REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES:

All proposed alternative were incorporated into the provision of the standards during their development. No alternatives were proposed during the public comment period. Therefore, there was no need for rejecting proposals.

None of the businesses affected by these standards are considered to be "small businesses" as defined in Government Code Section 11342.610.

COMMENTS MADE BY THE OFFICE OF SMALL BUSINESS ADVOCATE

No comments were received from the Office of Small business Advocate.

COMMENTS MADE BY THE TRADE AND COMMERCE AGENCY

No comments were received from the Technology, Trade and Commerce Agency.